86-504

Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1986

STAFFORD MISSICK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether compelling prejudice requiring severance of criminal defendants may be present without mutually exclusive antagonistic defenses?

LIST OF INTERESTED PERSONS

The only persons having an interest in the outcome of this case are the Petitioner, his family, and the United States of America.

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

STAFFORD MISSICK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petitioner, STAFFORD MISSICK, respectfully prays that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on June 30, 1986.

OPINIONS BELOW

The judgment and order of the Court of Appeals was rendered without opinion. It is reproduced in the Appendix attached hereto and is reported as United States v. Missick, 795 F.2d 87 (11th Cir. 1986). No petition for re-hearing and/or suggestion for re-hearing en banc was filed in this cause.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C.§1254(1). The judgment from which review is sought was rendered June 30, 1986. A motion to extend the time within which to file this petition was forwarded to this Court on August

25, 1986. It was denied by Justice Lewis F. Powell, Jr. on August 27, 1986. The Petitioner respectfully requests that this petition, filed within the jurisdictional mandates of Rule 20.1 of the Rules of this Court, though outside of the sixty (60) day requirement, be given consideration.

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Amendment V:

> No person shall...be deprived of...liberty...without due process of law...

STATEMENT OF THE CASE

COURSE OF PROCEEDINGS

A Federal Grand Jury in the Southern District of Florida returned a nineteen (19) count indictment charging Petitioner, STAFFORD MISSICK, and three others [1] with conspiring to violate the Travel Act (18 U.S.C. §1952) (Count 1) [18 U.S.C. §371]; various substantive Travel Act violations (Counts 3-19) [18 U.S.C. §1952 (a)(3)] and conspiring to import and distribute cocaine and marijuana (Count 2) [21 U.S.C. §963].

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1 / Norman Saunders, Aulden Smith and Andre Fournier

Petitioner was indicted in four (4) of those counts charging violations of 18 U.S.C. §371 (Count 1), 21 U.S.C.§963 (Count 2) and 18 U.S.C. 1952 (a)(3) (Counts 7 and 9). 2/

Trial commenced on July 9, 1985 as to Petitioner and co-defendants Saunders and Smith.

During trial, co-defendant Smith developed a case of mumps and his case was severed. On July 19, 1985, Missick was convicted of all four counts in which he was charged. 3/

The essense of the sentence imposed upon MISSICK was ten (10) years incarceration and a $50,000 fine.

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2 / Trial was based on a redacted version of the indictment whereby certain counts were eliminated and others re-numbered. In the original indictment, MISSICK was charged in Counts 1,2,12 and 15.

3 / Saunders was convicted of six of the seven counts in which he was charged.

STATEMENT OF NECESSARY FACTS

The defendants at trial were official members of a foreign government, The Turks and Caicos Islands, British West Indies. Norman Saunders was the Chief Minister. Aulden Smith, who was severed mid-trial, was Minister of Works. Petitioner STAFFORD MISSICK was Minister of Commerce and Finance.

The case involved the dealings of Barry Seal, a major government informant, with the various defendants in several matters. The first involved Seal's

dealings with Smith in early January 1985 in conjunction with the transportation of eighty-five (85) kilograms of cocaine from Bolivia through the Turks and Caicos Islands to Las Vegas, Nevada. Saunders' name came up in conjunction with that activity regarding payoffs on the Turks and Caicos stop-over. MISSICK was in no way mentioned or connected to this transaction.

Subsequent to the "Las Vegas deal", on January 23, 1985, Seal had discussions with Smith and Saunders regarding future narcotic runs and the use of the Turks and

Caicos as a stop-over point. Those discussions centered on three points: protection on the Turks and Caicos during smuggling ventures, Seal's use of a plane for marijuana hauling and a lease on an airplane hangar on South Caicos Island. Saunders was paid $20,000 with plans for more.

Petitioner MISSICK first entered the picture during discussions, between Smith and Seal (and an undercover agent) pertaining to future cocaine shipments from Columbia. He met with Seal on three occasions over the course of two

weeks. Following the final meeting MISSICK was arrested.

MISSICK never denied his part in the discussions with Seal or the undercover agent (in fact, most were taped). However, he stated that he was playing a role. He stated he was acting in an undercover capacity with the knowledge of a Turks and Caicos police officer and was attempting to learn all he could about the drug operation to be able to formulate countermeasures to thwart it. He had formerly cooperated with law enforcement regarding the drug

problem and had even given a speech pointing to the evils of drugs. A tape of that speech was offered as evidence by MISSICK but it was not admitted more because Saunders, whose defense was contrary to MISSICK, objected than because the Government objected. The Court was inclined to admit that tape before Saunders objected.

Throughout the trial, counsel for Saunders and MISSICK clashed and both contended that their defenses were so antagonistic that neither could obtain a fair trial.

Simply put, the defenses of MISSICK and Saunders were as follows:

1. Missick contended that he was opposed to drugs and in his attempt to rid his homeland of drugs he had often provided aid to law enforcement. He contended that, in this case, he had feigned interest and agreement in this scheme of Barry Seal's as part of his continuing efforts to stop drug trafficking and that he was acting with the knowledge of, and as an agent for, law

enforcement.

2. Saunders contended that he spoke with and met with Barry Seal not to further drug activities but rather to encourage building and investment in the Turks and Caicos Islands that would benefit the people of the islands.

REASONS FOR GRANTING THE WRIT

ANTAGONISTIC DEFENSES CAN GIVE RISE TO PREJUDICE REQUIRING SEVERANCE EVEN WHEN THOSE DEFENSES ARE NOT MUTUALLY EXCLUSIVE

The issue presented for review involves the conditions upon which antagonistic defenses can give rise to severance in a criminal trial.

The general rule is that severance motions made pursuant to Rule 14, Federal Rules of Criminal Procedure, are left to the sound discretion of the trial court and should not be disturbed on appeal absent a clear showing of abuse. United States v. Carter, 760 F.2d 1568, 1574 (11th Cir. 1985). But,

as compelling prejudice requiring severance may occur at any time during trial or may be the result of mounting events at trial, this Court has said that the trial court has a continuing duty to monitor the trial for such prejudice and to order severance if such prejudice does arise. Schaffer v. United States, 362 U.S. 511, 516, 80 S. Ct. 945, 948 (1960). To establish an abuse of discretion, it has been held that the defendant must establish that without a severance, he was unable to receive a fair trial and that he suffered compelling prejudice against which the trial court could offer no protection. United States

v. Magdaniel-Mora, 746 F.2d 715, 718 (11th Cir. 1985).

In this case, Petitioner claimed below and claims here that he suffered compelling prejudice and should have been granted a severance because his defense was antagonistic to that of the other defendants with the result that (1) evidence crucial to his defense was omitted at trial mainly because of objetions raised by co-defendant's counsel and (2) highly prejudicial evidence irrelevant to the Petitioner was admitted (as to co-defendants) at his joint trial.

Antagonistic defenses have been recognized as a basis for

severance under Rule 14. See United States v. Romanello, 726 F.2d 173 (5th Cir. 1984). Here, as stated earlier, MISSICK'S defense was that he was acting in an undercover capacity to gain knowledge of the drug plans in an effort to aid law enforcement in stopping drug trafficking. Co-defendant Saunders alleged he met and spoke to the informant, Barry Seal, not to further drug activities but to encourage building and investment on the islands. 4 /

The Eleventh Circuit has previously held that to compel severance the defenses must be more than merely antagonistic, they must

4 / Co-defendant Smith was severed for health reasons before he got to put forth a defense.

be antagonistic to the point of being mutually exclusive or irreconcilable. United States v. Carter, 760 F.2d 1568, 1574 (11th Cir. 1985); United States v. Esle, 743 F.2d 1465, 1476 (11th Cir. 1984). In this case, as there was no opinion written by the Eleventh Circuit, it must be assumed that it found no such exclusiveness here. While recognizing that this case does not involve the classic fingerpointing situation of "It wasn't me, it was him", the trial and the nature of the various defenses caused MISSICK to suffer compelling prejudice in two ways.

First, because of the

antagonism, MISSICK was unable to put before the jury an absolutely critical piece of evidence. In order to substantiate his defense that MISSICK was a fighter against drugs, his counsel advised that he wished to play for the jury a tape where MISSICK preached on the evils of drugs. That tape was offered to show the state of mind of MISSICK as being opposed to drugs. The Government and counsel for Saunders objected to the introduction of the tape and lengthy argument ensued. (Partial trial transcript set out as Exhibit B). The Court indicated at first that it was inclined to admit the tape, but, after viewing it and

hearing argument from counsel for Saunders opposing its introduction at a joint trial, denied it admission citing Rules 401, 403 and 404 (a)(1), Federal Rules of Evidence. Counsel for MISSICK urged that the tape was an essential portion of his defense. The tape would have been corroborative of MISSICK being a foe to drugs from which the jury could have found credence to his defense that he was a party to the three conversations in which he was involved as part of his own investigation. Of course, the jury could still have found him guilty even after seeing the tape. But MISSICK should have been allowed

to present this critical piece of evidence.

It is universally recognized that evidence, to be relevant to an inquiry, need not conclusively prove the ultimate fact in issue, but only have "any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would without the evidence." New Jersey v. T.L.O., ____ U.S. ____, 105 S.Ct. 733 (1985). Rule 401, Federal Rules of Evidence.

Of course, a trial judge is vested with wide discretion in determining whether evidence is

relevant, but that discretion does not extend to the exclusion of crucial relevant evidence necessary to establish a valid defense. United States v. Wasman, 641 F.2d 326, 329 (5th Cir. Unit B 1981); United States v. Riley, 550 F.2d 233, 236 (5th Cir. 1977). Intent and state of mind were very much in issue. The tape could have been of great aid to the jury on these points. It would have shown them in a manner other than a defendant's mere words from the witness stand of the force of his convictions. It was kept from the jury mainly because it would be or could be adverse to Saunders.

Second, evidence was introduced at trial concerning a cocaine transaction in Las Vegas, Nevada. This transaction mainly involved co-defendant Smith. Approximately eighty-five (85) kilograms of cocaine had been shipped from Bolivia through the Turks and Caicos Islands to Las Vegas where it was seized. Discussion between Smith and Seal about problems with pay-offs on the Turks and Caicos led Seal to speak with Saunders. But there was no allegation whatsoever that MISSICK was involved in or had any knowledge whatsoever of the so-called "Las Vegas deal". At trial, however,

evidence of this matter and the seizure of the large amount of cocaine was introduced as to Saunders and Smith, with a limiting instruction that it was not to be used as to MISSICK. But the "Las Vegas deal" involved the only real cocaine involved, everything else was just talk (MISSICK was only involved in three conversations prior to his arrest). This evidence, in spite of the limiting instruction, could very well have changed the complexion of this case in the eyes of the jury because of the hard evidence of cocaine seizures, of which MISSICK had absolutely no connection.

The Petitioner contends that the omission of the tape of his speech showing his state of mind and the admission of evidence relating to the "Las Vegas deal" caused him to suffer compelling prejudice in this joint trial violating his due process rights.

The Petitioner recognizes that the decision whether to grant a severance pursuant to Rule 14, Federal Rules of Criminal Procedure is one left to the discretion of the trial court. As stated earlier, for a severance to be granted based on antagonistic defenses compelling prejudice must be shown. Appellate courts have declared that to warrant

severance, the defenses must be so antagonistic as to be mutually exclusive. See United States v. Carter 760 F.2d 1568, 1574 (11th Cir. 1985). But exclusiveness does not need to be of the fingerpointing kind. While joint trials serve the salutory purpose of judicial economy, a defendant's right to a fair trial should not be sacrificed.

CONCLUSION

For the above stated reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 1986, three copies of the Petition for Writ of Certiorari were mailed to the Solicitor General, Department of Jutice, Washington, D.C. 20530 and to Sonia Escobio O'Donnell, Deputy Chief, Appellate Division, Office of the United States Attorney, 155 South Miami Avenue, Miami, Florida 33130.

JAY R. MOSKOWITZ, ESQUIRE

A P P E N D I X

IN THE UNITED STATES COURT
OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 85-5740

D.C. Docket No. 85-00165

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STAFFORD MISSICK,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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(June 30, 1986)

Before RONEY, Circuit Judge,
HENDERSON*, Senior Circuit Judge,

and ATKINS***, Senior District Judge.

PER CURIAM: AFFIRMED. See Circuit Rule 25.

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*See Rule 3(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.
**Honorable C. Clyde Atkins, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

Judgment entered:
June 30, 1986 For the Court:
Miguel J. Cortez, Clerk

ISSUED AS MANDATE: July 22, 1986

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NORMAN SAUNDERS
STAFFORD MISSICK,

Defendants.

_____/

Case No. 85-165-Cr-SPELLMAN
Miami, Florida
July 18, 1985
8:55 a.m.

PARTIAL TRANSCRIPT OF TRIAL

pages 1257- 1273

MR. CARLTON: [MISSICK'S COUNSEL] Yes, sir.

Before we bring the jury in so that we don't have to

interrupt the proceedings further, I had indicated to the Court that, number one, I wanted to play that videotape which shows Mr. Missick at a meeting in church clothes. This was in November '84, and prior, obviously, to anything that has to do with the things contained in this indictment.

And Mr. Missick on the tape is telling his group in assembly of the detriments of drugs, and as I understand it, ridding the islands of drugs, things negative to drugs being on the Turks and Caicos Islands.

And I wish to play this tape to tell the state of mind of

Mr. Missick prior to any time that this could have been concocted or created in anticipation of some sort of a defense if he were ever apprehended for an illegal act, but that it would show his history as being opposed to drugs, which is consistent with his defense, as Your Honor has heard from my opening statement.

THE COURT: I have not seen that tape. Have you?

MR. GREGORIE: [The Prosecutor] I have, Your Honor. I object to it on several grounds.

First of all, relevancy: It takes place in November of 1984, and Mr. Missick enters this

conspiracy sometime in February of 1984.

Secondly, Your Honor, the fact that somebody says I didn't rob a bank a year ago and he is on trial for robbing a bank today has absolutely no relevance, and I think that same thing applies, the fact that he says I don't believe in drug dealing a year ago and now he is involved in the drug dealers is absolutely irrelevant.

Secondly, Your Honor, I think that the prejudicial value of that tape far outweighs its probative value; that is, it is a church meeting, a prayer meeting, with the defendant acting in the

sense as a preacher. I think that from that standpoint, it is far more prejudicial than probative.

And finally, Your Honor, it contains hearsay; that is, it isn't just Mr. Missick. The tape has several other people on it making comments and a number of other people there at the meeting complying, so that it is hearsay.

I would submit that the only way it could come in is by Mr. Missick himself taking the witness stand and if that be the case, he is certainly able to testify that he has taken that stand against drugs in the past and that he continue it. But the playing of

the tape then would be redundant to that fact, is more prejudicial than probative and irrelevant to the issues in this trial.

MR. CARLTON: If I may briefly respond, Your Honor.

The Government's allegation the prejudicial affect is greater than anything of a probative nature, I disagree with, unless we were to assume anything that the defense may put on is prejudicial to the Government and vice-versa as far as the defense is concerned.

The fact that it happens to be a church gathering I think is really immaterial. We, as a matter of fact, do not intend to play the

entire tape. We only intend to play with the Court's permission that portion of the tape having to do with Mr. Missick.

Mr. Missick in this tape is not a preacher or a minister, per se, a church minister. He is an invited speaker, and he speaks for a period of approximately ten to twelve minutes.

Now, if this were something that may be a stand that he took back in 1960 or '65, it may be one thing, but this is November of '84 with the alleged involvement of Mr. Missick in February of '85. Counsel inadvertently said February of '84, but February of '85.

And I think what it does is it goes as a matter of weight, as the Court will instruct the jury, I'm sure, can disregard this tape as they can disregard any of the tapes and disregard any of the testimony, including Mr. Missick if he were to testify, and I assume at this point he will.

But I think that it is admissible for whatever the jury wishes to give it.

Now, if I may just say this, Your Honor: If Mr. Missick had done this years ago; that is, speak against drugs, and suddenly in February of 1985, he comes out as a drug smuggler or a person in aid of

drug smuggling as is the allegations of the Government, I think what counsel for the Government says may have merit. But the fact that this is only a matter of roughly three to four months before the time that Mr. Missick is alleged to have been involved in this, I think it is quite relevant because he certainly didn't plan that.

Now, certainly, the Government could argue he is playing both sides like an informant, is a double agent, he works drug deals and he works for the Government at the same time. That could be argued.

However, we can likewise

show his predisposition to an abhorance of drugs, and that is entire--well, not his entire, but a great part of his moral fibers are opposed to drugs and makes this known to the islands and is trying to clear the islands of the drug influence.

MR. KRIEGER: [Saunders' counsel] If the Court please, I have not seen the tape, but my immediate reaction, my gut reaction, is to lodge an objection to it. I think the tape would utilized as a predicate to dumping on Mr. Saunders, and if my supposition is correct, then we are exaggerating and accentuating the antagonistic

defenses that have been demonstrated throughout this trial and with increasing intensity.

Just yesterday Mr. Missick's lawyer lodged a successful objection to a piece of evidence which we consider to be highly exculpatory of Mr. Saunders. Whether that objection--that objection the Court found to be well founded on the basis of the balancing test under rule 403, the Federal Rules of Evidence.

It is my submission to the Court that the same balancing test would result in a recognition that this piece of evidence would be used to the great prejudice of

Mr. Saunders.

I don't see any other reason for it than the predicate for an argument to this jury and demonstration to this jury that Mr. Missick was engaged in an investigation of the activities of Mr. Saunders and Mr. Smith, and I don't see how you can get more antagonistic than that.

MR. CARLTON: May it please the Court, I think counsel for Mr. Saunders totally misunderstands this tape and what the purpose of this tape is. It has absolutely nothing to do with his client. It is not intended to be used for or against his client. If

anything were to show antagonistic defenses, and I agree that that exists, obviously, from my many motions for mistrial. This certainly doesn't enter into it but solely has to do with Mr. Missick. Mr. Saunders isn't mentioned on the tape, he is not referred to on the tape and the purpose is as previously indicated to the Court.

THE COURT: We are going to take a five minute break and you can be ready to present your case. If you are going to put Mr. Missick on the stand, fine. You can do so at that time.

I will rule on the admissibility of the tape after

that.

MR. CARLTON: All right. Thank you.

THE COURT: I am inclined to grant it, but I want to think about it for a few minutes.

We will be in recess for five minutes, gentlemen.

(Recess taken at 9:15 a.m. until 9:25 a.m.)

(Jury absent.)

MR. CARLTON: Your Honor, during the brief recess we just took, my son told me that he was not sure because of all the different tape and things that we reviewed, but he thought possibly the mention of officials may have been made on

this tape.

MR. CARLTON, III: That is correct, Your Honor.

In all fairness to Mr. Saunders, specially in light of the objection lodged by Mr. Krieger, I think it would be of benefit to the Court to review the tape prior to it being played before the jury, just in case something was mentioned about officials by Stafford Missick.

MR. CARLTON: You are not certain of that?

MR. CARLTON, III: I am not certain of it.

The tape is very lengthy and we are not playing the entire

tape, only that ten-minute segment, and I would hate for it to come out and have problems.

MR. KRIEGER: I would respectfully request leave of the Court to view the portion that Mr. Carlton wishes to proffer.

THE COURT: Let's look at it. Let's take the ten minutes now and look at it.

Is this audio and visual?

MR. CARLTON: Yes, and intelligible. For that matter, so was Barry Seal's.

(Court and counsel reviewed tape.)

(Discussion off the record.)

MR. KRIEGER: I have a barrel full of objections.

MR. CARLTON: Before he rolls the barrel, Your Honor, apparently my son was thinking of another tape that he may have seen before in the course of this investigation, and I frankly did not hear anything about officials on that particular tape.

MR. KRIEGER: I respectfully suggest to this Court that Mr. Missick may, and I don't step out of my role as a lawyer and try to become a judge, have the right to play this tape in part or in its entirety as proffered in a trial in which he himself alone is

being tried.

But for him to introduce evidence which deals with, quote, "the horrors of drugs," close quote, is terribly inflammatory, could have no effect upon this jury but to point an accusing and damning and condemning finger at Norman Saunders to introduce evidence the Government has lost its sanity, would not proffer, leads me in the position, Your Honor, that the only way Norman Saunders could get a fair trial would be by a severance from Mr. Missick, if this evidence is going to come in.

There is not one word that I heard that is relevant to this

case.

If Mr. Missick wants to get up on the witness stand and say, "I have spoken publicly about the evils of drugs, their depravation occasioned by drugs, I have made such speeches at this occasion and that occasion and the other occasion," I don't think that I could lodge a successful objection. But if the contents of those speeches, irrelevant in nature, and inflammatory in every single context, are brought before this jury, this jury is being asked to acquit Mr. Missick by emotion and convict Mr. Saunders by the same emotion.

The tape runs 139 counter numbers, Your Honor. The first 50 are basically a prayer meeting. The last 16 have nothing whatsoever to do with any proffered issue.

From counter No. 50 up to and including roughly counter No. 122, we deal with the problems of youth, the prevalence of drugs in the Turks and Caicos Islands, and the evils of drugs in the Turks and Caicos Islands.

I suggest to this Court that whether or not there is a drug problem on the Turks and Caicos Islands is totally immaterial to any issue to be tried here.

I think that this Court

need not even reach a consideration under Rule 403 of the Federal Rules of Evidence and exercise its discretion in regard to prejudice against probative value. I think that the application of the test of relevancy under Rule 401 of the Federal Rules of Evidence indicates that this tape is just not relevant. Its prejudice is real.

On behalf of Norman Saunders, I object, Your Honor. If the Court's ruling is not in sustaining of the objection, I move most vigorously for a mistrial and a severance.

I can't conceive of Norman Saunders getting a fair

consideration by this jury once this tape is played.

MR. CARLTON: Your Honor, may I respond?

THE COURT: Let me hear from the Government first.

MR. GREGORIE: Your Honor, although I disagree quite strongly with the indication that this in some way tied into an antagnostic defense, and I realized that setting up an appellate issue here is one that I am sure both counsel had some interest in, the Government's position is that this is plainly irrelevant and Mr. Krieger is absolutely right about that your Honor.

This is a prayer meeting, it is mixing materials that have absolutely nothing to do with the issues in this case, and that the value of this tape especially since it is hearsay, Your Honor. If the witness is going to get up and testify and be cross examined about what he says on the witness stand is one thing. I mean, this tape is inadmissible on that ground as well as on relevancy grounds, Your Honor.

MR. KRIEGER: Your Honor, before Mr. Carlton states his position, I don't want this record to even appear that my interest in objecting is to set up an appellate

issue. I am here to try a case in the best way that I can, and that it is my duty and my obligation to make objections as I see them appropriately, and that I am not playing a lawyer's game and I never would of trying to set up an appellate issue and the devil take what happens in the District Court.

I am here to attempt to get an acquittal and that is my job and that is my goal and that is my objection.

MR. CARLTON: May I address the Court now, Your Honor?

THE COURT: Yes. Very well.

MR. CARLTON: Your Honor,

I think about the only thing that Mr. Krieger and I have agreed upon in this case is the very last statement that he made, and that is regarding the comment of Mr. Gregorie as to setting up an appellate issue.

I at this stage in the trial am to present and it is my duty as an attorney representing a client before this Bar of Justice to present such evidence as I consider relevant, submit it to the Court. I think we have done so. We have attempted to do so with honor in the sense that we did not just present it or being to play it, but we brought the issue before the Court

in advance.

And at such time as I set up appellate issues then I am destroying my own dignity and the dignity of our profession.

However, getting to the issue at hand, and this is where Mr. Krieger and I part company on our defenses, Mr. Krieger's objection is as to the horrors of drugs and that we are going to present this.

Well, I cannot believe that Mr. Krieger in his defense means to speak of the benefits of illicit drugs upon the youth of our country and of other places in the world. And the fact, going into his second point that it is not

relevant, the fact that Mr. Missick prior to this--these events by a period of three to four months spoke at a meeting as was depicted in this tape not merely to rid the Turks and Caicos Islands of drugs which is the very heart of his defense, but to rid the Turks and Caicos Islands of drug traffickers, and this is not only the heart but it is the blood that pumps into the heart in the defense that Mr. Missick is presenting before this Court and before this jury.

Counsel for Mr. Saunders says, well, if Mr. Missick got up and said he made speeches, he couldn't very well object. I think

what Mr. Krieger objects to is not the fact that he made a speech, but how well he did. The fact that Mr. Missick expressed himself artfully, expressed how he felt and that he feels that as Mr. Krieger feels that it may have a negative affect towards his client.

I suggest to this Court that the intention of this tape being played has nothing whatsoever to do with Mr. Saunders. If Mr. Saunders and Mr. Krieger in the preparation of his defense of his client has reached a point of such schizophrenic paranoid that he feels that anything another defendant brings in reflects upon his client,

well, then, I feel sorry for Mr. Krieger and for his defense.

We are not trying this case by emotion, we are trying this case by facts---

THE COURT: Let me interrupt you.

MR. CARLTON: Yes, sir.

THE COURT: Your sympathy for Mr. Krieger and his defense is appreciated by the Court. However, whether Mr. Krieger, Miss Van Dusen, or anybody else is schizophrenic paranoia has no place in this trial, and I would appreciate it if you would stick to the legal arguments and keep the personalities out of this.

MR. CARLTON: Yes, I will, sir, and I want you to know there is no personal difference between Mr. Krieger and myself. I never said---

THE COURT: Well, you said you only agreed on one thing. I think there is at least another thing that you agree on, and that is that you have antagonistic defenses.

MR. CARLTON: Correct.

THE COURT: You do agree on that?

But you did get personal, and I don't think that is proper.

MR. CARLTON: I apologize to the Court and through the Court

apologize if it was offensive to Mr. Krieger.

THE COURT: Oh, I think he took it as a joke.

MR. CARLTON: Well, then, I am pleased.

THE COURT: Very well.

MR. CARLTON: Your Honor, in addition to this, Mr. Missick in his defense,and I proffer this to the Court, will address with the Court's permission, of course, the prevalence of drugs in the Turks and Caicos Islands, and this is what prompted him to conduct the investigation which he did, and I think this is reflected in this tape by the address that he made prior to

any involvement.

As regards the Government is concerned and their objection, I am not shocked at their objection, that's not uncommon. The Government may object to some evidence that we intend to present, but I think that they have made no legal argument as to the fact that this should not be admitted. I think that if Your Honor respectfully were to disallow Mr. Missick from presenting this, and I mean no offense to the Court, that I think that you would perhaps be inadvertently, maybe, but depriving this defendant of his opportunity to defend himself before the jury, because of the importance

that I see in the presentation of the tape.

I would hope Your Honor would allow us to do so.

MR. KRIEGER: May I footnote my argument, Your Honor?

THE COURT: Briefly.

MR. KRIEGER: Your Honor, there is no foundation, and there can be no foundation, except by extrinsic evidence which really would be collateral and inadmissible at this trial, for Mr. Missick's remarks as portraved on the tape.

As for instance, the highly inflammatory nine-year-old druggie story, the corruption of the young minds, the laxity of parents,

and as a fact, whatever the drug problem, if it exists at all, might be in the Turks and Caicos.

We are going to have a trial within a trial, perhaps. I think that is another legal ground for the Court to base a ruling favorable to Mr. Saunders on.

THE COURT: Anything else?

MR. GREGORIE: Nothing from the Government, Your Honor.

THE COURT: Allright, Mr. Outlaw, bring the jury in, please.

(Jury recalled at 9:55 a.m.)

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MR. CARLTON: Your Honor, I would at this time ask permission to play solely that segment of the tape that pertains to Mr. Missick.

THE COURT: Objection sustained.

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THE COURT: Now that the jury is out, I just want to announce the reason for my sustaining the objection to Defendant Missick's B.

I've weighed that evidence, along with Rules 401, 403 and 404(a)(1) and that's the basis of my ruling.